

Appl. No. : 10/714,688
Filed : November 17, 2003

REMARKS

In the Office Action mailed June 29, 2004, the Examiner rejected all pending claims, Claims 1-17, for obvious-type double patenting. Claims 1, 4-7, 12 and 16-17 have also been rejected as being anticipated. In the present Amendment and Response to Office Action, Applicants have amended Claim 1 and submitted a Terminal Disclaimer. Applicants respectfully request entry of the amendments and full consideration of the remarks contained herein.

Amendments to the Claims

Applicants have amended the claims to further clarify the subject matter that Applicants regard as the invention. Independent Claim 1 has been amended to recite that "a lower-most part of the conductive plug and a lower-most part of the electrical device are at the first level." Support for this language can be found in the Application as originally filed. *See, e.g.*, the Application, pp. 7-13 and Figures 4-14, as originally filed. Accordingly, Applicants respectfully submit that the amendment adds no new matter and is fully supported by the application as originally filed.

Rejections for Double Patenting

The Examiner has rejected Claims 1-17 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-19 of U.S. Patent No. 6,365,453. The Examiner also indicated that these rejections could be overcome by filing a terminal disclaimer. In response, Applicants have filed a Terminal Disclaimer herewith. Accordingly, Applicants submit that the rejections for double patenting are overcome.

Rejections Under 35 U.S.C. § 102(e)

The Examiner has rejected Claims 1, 4-7, 12 and 16-17 as being anticipated by Roberts *et al.* (U.S. Patent No. 6,221,711 B1).

Applicants respectfully submit that the claims, as amended herewith, distinguish the art of record.

Applicants note that independent Claim 1 has been amended for clarity and now recites that "a lower-most part of the conductive plug and a lower-most part of the electrical device are at the first level." Claim 1 also recites that the "electrical device is distinct from a conductive plug."

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Thus, the conductive plug and the electrical device, which is different from a conductive plug, have their lower-most parts at the same “first level,” with the skilled artisan understanding that the “first level” can have minor elevational non-uniformities stemming from, *e.g.*, non-uniformities in depositions or planarization steps.

In contrast, Roberts *et al.* teaches conductive plugs and electrical devices with their lower-most parts at clearly different levels. In particular, Roberts *et al.*, with reference to Figures 6, 11 and 12 of that patent, teaches forming each of “conductive plugs 54, 56 and 58” over the regions 30. See Roberts *et al.* at Col. 3, lines 20-23. To form a capacitor, a storage node layer 70, dielectric layer and cell plate layer 72 are formed *over* the conductive plugs 54 and 58. See Roberts *et al.* at Col. 4, lines 32-41. Roberts *et al.* clearly illustrates conductive plugs 54, 56 and 58 each starting at the same level; however, the capacitors comprising the storage node layer 70, the dielectric layer and the cell plate layer 72 are on top of the plugs 45 and 58 and, so, each have a lower-most part that is *above* the lower-most part of the plug 58. Thus, Roberts *et al.* does not teach a conductive plug and an electrical device each having a lower-most part that is at the *same* level. Consequently, Applicants submit that Roberts *et al.* does not teach a conductive plug and electrical device, which is “distinct from a conductive plug,” with “a lower-most part of the conductive plug and a lower-most part of the electrical device are at the first level,” as recited by independent Claim 1. As such, Applicants respectfully submit that Roberts *et al.* does not anticipate independent Claim 1. Because Claims 4-7, 12 and 16-17 depend from Claim 1, Applicants submit that those claims are also not anticipated by Roberts *et al.*

Accordingly, Applicants submit that the pending claims are allowable over the art of record. Applicants have not directly addressed the rejections of all dependent claims as being moot in view of the amendments and remarks herein. However, Applicants expressly do not acquiesce in the Examiner’s findings not addressed herein. Indeed, Applicants submit that the dependent claims not addressed herein recite further novel features of particular utility.

CONCLUSIONS

In view of the foregoing amendments and remarks, Applicants request entry of the amendments and submit that the application is in condition for allowance and respectfully request

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the same. If some issue remains which the Examiner feels may be addressed by Examiner's amendment, the Examiner is cordially invited to call the undersigned for authorization.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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